

# **Summary of Selected Victim Related Legislation**

## **Passed During the 2003 Session of the General Assembly**

### **HB 1424 Payment of medical fees in certain criminal cases.**

Amends § 19.2-165.1

*Summary as passed:*

Provides that upon conviction of the defendant in any case in which medical fees were incurred in the process of gathering evidence, the court shall order that the defendant reimburse the Commonwealth. At sentencing Victim/Witness Programs may be called upon to inform the Commonwealth's Attorney of the amount of payment requested/paid so that this cost can be assessed against the offender. (This bill is identical to SB1209).

*Patrons:* Byron, Dudley and Lingamfelter

### **HB 1533 Juvenile court; definition of family and household member.**

Amends § 16.1-228

*Summary as passed:*

Adds half-siblings to the definition of family or household member under the juvenile and domestic relations district court.

*Patron:* Melvin

### **HB 1924 Notice of release on parole.**

Amends § 53.1-136

*Summary as passed:*

Requires the Parole Board to notify the attorney for the Commonwealth in the jurisdiction where the inmate was sentenced by certified mail at least 21 business days prior to release on discretionary parole of any inmate convicted of a felony and sentenced to a term of 10 or more years. Currently, the Board is required to notify of release for any type of parole, not solely discretionary parole. Parole Board staff estimate that approximately 2,500 offenders are released annually on mandatory parole. Due to passage of this bill, the Board would not have to send a notification of the release of each of these offenders to Commonwealth's attorneys by certified mail, for a savings of about \$5 per mailing. The bill would not affect the notifications that the Department of Corrections has to send for all releases.

*Patrons:* Almand, Brink, Darner and Moran

### **HB 2008 Conditions of probation when restitution ordered.**

Amends § 19.2-305.1

*Summary as passed:*

Removes the provision that exempted DUI convictions from the requirement for restitution for property damage or loss, medical expenses of the victim and community service. The bill also allows the court to include funeral expenses as restitution. The bill as introduced would have required that local and state probation periods are extended until the defendant pays fines and costs, any required restitution and support and completes any required community service.

*Patron:* Bell

### **HB 2275 First domestic assault; deferral and probation.**

An Act to amend and reenact § 18.2-57.3 of the Code of Virginia, relating to assault and battery against a family or household member.

*Summary as passed:*

Makes discretionary with the court, where the court is deferring proceedings, the provisions for evaluating and ordering participation in an education or treatment program for persons charged with a first domestic assault. The bill also provides that the term of probation is 2 years from the date the court makes findings of facts that would support a finding of guilt (local supervised probation not available in all jurisdictions). Under current law, probation

runs for a 2-year period following completion of local probation supervision, and evaluation and participation in an education or treatment program is mandatory where the court defers findings. This bill is identical to SB 826.

*Patrons:* Hurt and Marshall, D.W.

## **HB 2379 Crime victim rights.**

Amends § 19.2-11.01

*Summary as passed:*

Adds current or former foster parent or other person who has or has had physical custody of a minor victim for six months or more or for the majority of the minor's life to the definition of "victim" in the Crime Victim and Witness Rights Act for purposes of allowing 1) victim impact statement 2) right to remain in courtroom 3) ability to provide impact testimony and 4) consultation about plea agreements. The bill does not affect the current law definition of victim under the Criminal Injuries Compensation Fund and would not entitle foster parents to compensation. This bill arises out of an Alexandria case where a foster mother was unable to testify at the sentencing hearing of the man convicted of killing her foster daughter. As introduced, this bill was a recommendation of the Crime Commission and is identical to SB 1162.

*Patrons:* Moran, Albo, Athey, Kilgore and McDonnell; *Senators:* Howell, Norment and Stolle

## **HB 2445 Sexually violent predators.**

Amends §§ 2.2-3703, 37.1-70.1 through 37.1-70.6, 37.1-70.9 through 37.1-70.16, 37.1-103, 37.1-104, and 37.1-104.1 of the Code of Virginia, relating to sexually violent predators.

*Summary as passed:*

Moves the effective date of the sexually violent predator legislation from 2004 to "effective from its passage." The bill redefines sexually violent offense to include a forcible sexual offense committed prior to July 1, 1981, involving sodomy, object sexual penetration and aggravated sexual battery. A sexually violent predator is defined as a person with a qualifying offense who, because of a mental abnormality or personality disorder has difficulty controlling his predatory behavior and receives a certain minimum score on a sex offender risk assessment instrument. The bill limits the person's ability to raise challenges to the validity of his prior criminal convictions and restricts his right to use evidence in his defense if he refuses to cooperate with his mental examination. Time limits for actions required on behalf of the Commonwealth are extended and primary responsibility for control, care and treatment is placed with the Department of Mental Health, Mental Retardation and Substance Abuse Services or with a private entity with which the Department contracts. The bill changes the standard of proof for finding a person a sexual predator from "beyond a reasonable doubt" to "clear and convincing." This bill is identical to SB 1149.

*Patrons:* Griffith, Albo, Athey, Black, Cline, Cosgrove, Drake, Landes, Louderback, McDougle, O'Bannon, Suit, Watts and Welch

## **SB 788 Incarcerated felon divorce; guardian ad litem.**

Amends § 8.01-9

*Summary as passed:*

Provides that the guardian ad litem that must be appointed for an incarcerated felon in a divorce action will be paid for out of the criminal fund in certain limited circumstances involving domestic physical or sexual assault. The guardian ad litem fee will be taxed against the felon as a part of the costs of the proceeding and, if collected, repaid to the Commonwealth. Victim advocates have reported working with victims who cannot afford to pursue divorce from incarcerated spouses because, under current law, they would have to pay for their own representation as well as their spouses legal representation. This bill allows the court to eliminate that requirement.

*Patron:* Deeds

## **SB 826 Family abuse.**

Amends § 18.2-57.3

*Summary as passed:*

Makes discretionary with the court, where the court is deferring proceedings, the provisions for evaluating and ordering participation in an education or treatment program for persons charged with a first domestic assault. The bill also provides that the term of probation is 2 years from the date the court makes findings of facts that would support a finding of guilt (local supervised probation not available in all jurisdictions). Under current law, probation runs for a 2-year period following completion of local probation supervision, and evaluation and participation in an

education or treatment program is mandatory where the court defers findings. This bill is a recommendation of the Committee on District Courts. This bill is identical to HB 2275.

*Patron:* Marsh

### **SB 834 Violation of protective orders.**

Amends §§ 16.1-253.2 and 18.2-60.4

*Summary as passed:*

Provides that when a defendant is convicted of violating a domestic or stalking protective order, the court must issue a new protective order for a specified period not to exceed 2 years from the date of conviction.

*Patron:* Howell

### **SB 893 Protective orders when warrant issued for perpetrator.**

Amends §§ 19.2-152.8, 19.2-152.9 and 19.2-152.10

*Summary as passed:*

Includes in the provisions that allow for the issuance of protective orders following incidents of stalking, provisions that allow for the issuance of protective orders following criminal offenses resulting in “serious bodily injury to an alleged victim”. Protective orders may prohibit “criminal acts which may result in injury to person or property or acts of stalking.” In order to obtain a protective order under these provisions an arrest warrant must have been issued for the alleged perpetrator.

*Patron:* Watkins

### **SB 1003 Victims' rights.**

Amends §§ 2.2-511 and 19.2-11.01

*Summary as passed:*

Expands the services and information that law enforcement, the attorney for the Commonwealth and the Attorney General's Office must supply to victims of crimes. Victims will receive additional and more timely information about the investigatory and posttrial process. The Attorney General's office is currently required to provide victims notice of the filing of any appeal or habeas corpus proceeding. Language is added to clarify that such notice is to include the date, time, and place of hearings and disposition.

Under current law, law enforcement agencies must give victims a standardized form listing victims' rights and including a telephone number by which victims can obtain more information and assistance. Language is added to clarify that victims also are to receive the name address and phone number of the Commonwealth's Attorney and the investigating law enforcement agency. Investigating law enforcement agencies are required to provide this information as soon as practicable following identification of a victim.

Language is also added indicating that, where available, victim waiting areas which do not “place the victim in close proximity to the defendant or the defendant's family” are to be provided.

Under current law the Commonwealth's Attorney is required, under certain circumstances, to inform the victim of the contents of a proposed plea agreement and to obtain the victim's views concerning “plea negotiations”.

Language is added to clarify that the Commonwealth's Attorney is to obtain the victims views regarding “disposition” including “dismissal”, “pleas”, and “sentencing.”

Language is added requiring that, upon the victims written request, the Commonwealth's Attorney is to provide written notice of: 1) disposition, 2) the crimes for which the defendant was convicted, 3) the defendant's right to appeal, if known, and 4) the phone number to contact in the event of non-payment of restitution.

If the defendant has been released on bail pending appeal, the agency that had custody of the defendant immediately prior to his release must notify the victim as soon as practicable that the defendant has been released. Victims are responsible for providing address information to enable notification.

Finally the bill provides that if the defendant's conviction is overturned, and the case is retried or remanded for a new trial, the victim shall be entitled to the same rights as if the first trial did not take place.

*Patron:* Mims

## **SB 1121 Criminal background checks; victims of domestic violence.**

Amends §§ 37.1-183.3 and 37.1-197.2

*Summary as passed:*

Authorizes community services boards, behavioral health authorities and agencies licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services to hire persons who were convicted of one misdemeanor offense for assault and battery or assault and battery against a family or household member if 10 years have elapsed following the conviction, unless the person committed such offense in the scope of his employment in a direct consumer care position.

*Patrons:* Lucas and Ticer; *Delegates:* Baskerville, Bland, Crittenden, Melvin and Spruill

## **SB 1129 Court fees and costs.**

Amends §§ 16.1-69.48:1, 16.1-69.48:2, 17.1-275.1, 17.1-275.2, 17.1-275.5, 17.1-275.7, 17.1-275.8 and 53.1-131.1

*Summary as passed:*

Implements amendments made by the 2002 Session of the General Assembly to the fixed-fee provisions for misdemeanors, traffic infractions, and other violations in circuit and district court.

*Patron:* Norment

## **SB 1134 Commonwealth's right to appeal.**

Amends §§ 8.01-675.3, 19.2-398, 19.2-400 through 19.2-406, 19.2-408 and 19.2-409

*Summary as passed:*

Makes changes to reflect a 2002 amendment that allowed the Commonwealth to appeal a felony sentence that is contrary to mandatory statutory sentencing or restitution terms. Prior to the 2002 amendment the provisions addressed only pretrial appeals and amendments were needed to delineate between the procedures that apply to pretrial appeals and those that apply to a sentencing appeal.

*Patron:* Norment

## **SB 1149 Sexually violent predators.**

Amends §§ 2.2-3703, 37.1-70.1 through 37.1-70.6, 37.1-70.9 through 37.1-70.16, 37.1-103, 37.1-104, and 37.1-104.1

*Summary as passed:*

Moves the effective date of the civil commitment of sexually violent predator legislation from 2004 to "effective from its passage." The bill redefines sexually violent offense to include a forcible sexual offense committed prior to July 1, 1981, involving sodomy, object penetration or sexual battery. Sexually violent predator is defined as a person who, because of a mental abnormality or personality disorder has serious difficulty controlling his predatory behavior. The bill limits the persons ability to raise challenges to the validity of his prior criminal convictions and restricts his right to use evidence in his defense if he refuses to cooperate with his mental examination. Time limits for actions required on behalf of the Commonwealth are extended and primary responsibility for control, care and treatment is placed with the Department of Mental Health, Mental Retardation and Substance Abuse Services or with a private entity with which the Department contracts. The bill changes the standard of proof for finding a person a sexual predator from "beyond a reasonable doubt" to "clear and convincing." This bill is identical to HB 2445.

*Patrons:* Stolle, Blevins, Cuccinelli and Hanger

## **SB 1162 Crime victim rights.**

Amends § 19.2-11.01

*Summary as passed:*

Adds current or former foster parent or other person who has or has had physical custody of a minor victim for six months or more or for the majority of the minor's life to the definition of "victim" in the Crime Victim and Witness Rights Act for purposes of allowing the following types of input: 1) victim impact statement 2) right to remain the courtroom 3) ability to provide impact testimony and 4) consultation about plea agreements. The bill does not affect the current law definition of victim under the Criminal Injuries Compensation Fund and would not entitle foster parents to compensation. This bill arises out of an Alexandria case where a foster mother was unable to testify at the

sentencing hearing of the man convicted of killing her foster daughter. As introduced, this bill was a recommendation of the Crime Commission and is identical to HB2379.

*Patrons:* Ticer, Byrne, Edwards, Howell, Lucas, Mims, Puller and Whipple; *Delegates:* Albo, Amundson, Bolvin, Darner, Dillard, Petersen, Plum, Reese, Rust and Watts

## **SB 1209 Medical fees in certain criminal cases to be taxed as costs.**

Amends § 19.2-165.1

*Summary as passed:*

Requires that all medical fees involved in the gathering of evidence for all criminal cases where medical evidence is necessary to establish a crime has occurred and for cases involving abuse of children under the age of 18 be reimbursed to the Commonwealth by the defendant if he is convicted. (This bill is identical to HB1424).

*Patrons:* Newman; *Delegate:* Byron

## **SB 1234 False reports to law-enforcement officials.**

Amends § 18.2-460

*Summary as passed:*

Increases from a Class 2 misdemeanor to a Class 1 misdemeanor the punishment for knowingly and willfully making a materially false statement or representation to a law-enforcement officer who is in the course of conducting an investigation of a crime committed by another person.

*Patrons:* Saslaw, Blevins, Chichester, Cuccinelli, Edwards, Howell, Lambert, Puller, Quayle, Stolle, Ticer, Wampler and Whipple